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Air & Radiation Law News for June 1, 2017

Bloomberg BNA Daily Environment Report™

Leading the News

Oil & Gas

Zinke Orders Plan for More Oil Development in Alaska

The Interior Department will develop a revised plan for development in the National Petroleum Reserve-Alaska under an order issued May 31 by Interior Secretary Ryan Zinke.

News

Biodiversity

Agencies Sued for Not Releasing Mexico Border Wall Impact Documents

Failure to hand over documents detailing the Trump administration's plans to build a border wall between the U.S. and Mexico has prompted the Center for Biological Diversity to sue two federal agencies.

Budget

Minnesota Streamlined Permitting Could Benefit Mining, Forestry

Minnesota mining and forestry industries could benefit from the state's approved biennial environmental budget law and its changes to the state's permitting process.

Climate Change

EU, China to Reaffirm Paris Agreement Commitment, as U.S. Wavers

The European Union and China will reaffirm their commitment to the United Nations Paris Agreement on climate change during a June 1–2 summit in Brussels, despite uncertainty about continued U.S. participation in the deal.

Climate Policy

Exxon Investors to Company: Make Climate Curb Fallout Public

Exxon Mobil Corp. investors, in a split with the company, urged the explorer to publish a detailed analysis next year on how carbon curbs could affect the value of its oil fields, refineries and pipelines.

Climate Policy

Swiss Pickles Set to Benefit From First Carbon Capture Plant

Climeworks AG, the Swiss company that captures carbon from the air, opened its first commercial facility at a farm outside of Zurich.

Coal Mining

Environmentalists Revive Lawsuit Against Federal Coal Leasing Program

One of the litigants in an on-hold lawsuit over the Interior Department's coal leasing program said it's necessary to restart the case in light of the department's decision to begin processing coal lease applications again.

Energy

Exelon: Still Time for Pennsylvania to Help Three Mile Island

Pennsylvania's legislature still has time to help keep Exelon Corp.'s financially struggling Three Mile Island nuclear plant operating, Exelon's Joseph Dominguez told Bloomberg BNA.

Energy

Is Three Mile Island the Canary in Nuclear's Coal Mine?

In 1979, Three Mile Island managed to survive the worst nuclear accident in U.S. history. Almost four decades later, the Pennsylvania power plant can't seem to withstand cheap natural gas. And the Nuclear Energy Institute, which represents commercial nuclear operators in the U.S., is warning that lots of other U.S. reactors are equally imperiled.

International Climate

Musk Leads CEOs' Full-Court Press on Paris as Trump Weighs Exit

As Donald Trump nears a final decision on the Paris climate agreement, top corporate executives are mounting a last-minute push aimed at persuading the president that the U.S. has more to lose from abandoning the accord.

International Climate

Scoring Business Climate Action a Dilemma as Paris Exit Looms

The prospect of President Donald Trump pulling the U.S. out of the Paris climate pact has spurred states and U.S. companies to pledge to fill any gap in climate action. But the real gap may be in finding the right yardstick to measure companies' often-voluntary efforts as well as uniting a loose coalition of states that have cut carbon emissions.

Mining

Court Overturns Montana Mine Approval, Saying It Would Hurt Grizzlies

A federal court overturned Fish and Wildlife Service and Forest Service approvals for a proposed Hecla Mining silver-copper mine in northwest Montana, saying the mine would degrade some of the last remaining grizzly bear habitat in a wilderness area.

Motor Vehicles

EU Proposes Truck Monitoring as Preparation for Emissions Standard

Manufacturers of trucks and other heavy-duty vehicles sold in the European Union would be required to

monitor and report their vehicles' carbon dioxide emissions and fuel economy performance, under a long-delayed proposal published by the European Commission May 31.

Natural Gas

Could West Virginia Royalty Reversal Spark Suits?

The West Virginia Supreme Court's reversal of a decision on oil and gas leases is likely to spark more court cases unless the Legislature steps in, attorneys say.

Oil & Gas

EPA Methane Regulations Officially on Hold

An Obama-era EPA rule designed to limit methane leaks from oil and gas wells is officially on hold, as the agency's new leadership begins the formal process of weighing whether to repeal it altogether.

Radioactive Waste

Radioactive Waste Cancer Claims Win Reprieve

The radioactive waste-related cancer claims of four men may survive their deaths despite defects in their complaints, the Eastern District of Missouri ruled May 30 (McClurg v. Mallinckrodt, Inc., 2017 BL 180216, E.D. Mo., No.12-cv-00361, 5/30/17).

Renewable Energy

Businesses See Dollar Signs in Massachusetts Wind Farms

Massachusetts' future, multi-billion dollar offshore wind industry has dozens of businesses lining up to cash in.

Renewable Energy

Firm Offering 'Peer-to-Peer' Power Network in New York Rollout

A Seattle-based energy startup is offering consumers and businesses a way to power their homes with energy from their neighbors' rooftop solar systems, nearby wind farms and other sources of clean electricity.

Renewable Energy

Sun-Blessed Chile May Target 100% Renewable as Prices Slump

Chile may speed up its switch to clean power amid falling prices and expected improvements in storage, helping to squeeze out fossil-fuel generation more quickly than forecast, according to the country's National Energy Commission.

Renewable Energy

Vietnam Steps Into the Sun With Policy Fixing Solar Power Price

People in Vietnam will soon have the power to convert sun rays into not just electricity—but also cash—with the arrival of solar policies that are being welcomed by big energy users such as Intel and Coca-Cola.

Sustainability

U.S. Colleges, With \$500 Billion to Invest, Seek Green Deals

If you guessed that the University of California system would champion "sustainable" investing, you'd be correct. The catch is, the shelves in the sustainable investing aisle aren't especially well-stocked with opportunities.

Supe

Hill Watch

Hill Watch: Climate Regulation

The following chart summarizes the status of key environmental policy legislation pending in Congress. The first column provides a synopsis of the purpose, content, and support for the legislation. The second column summarizes the provisions of the legislation. The third column outlines the procedural path ahead and the political prospects for enactment of the bills.

Hill Watch: Coal Mining

Hill Watch: Energy

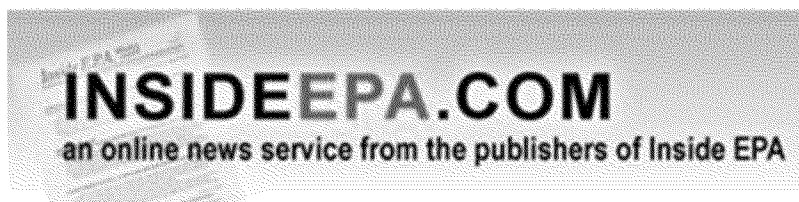
Hill Watch: Science Policy Regulatory Agenda

TODAY'S FEDERAL REGISTER

NOTICE. Daily Environment Report's Regulatory Agenda, Comment Deadlines, and Federal Register summaries are now published as part of EHS Federal Regulatory AlertTM <http://news.bna.com/frmn/>.

TODAY'S STATE REGISTERS

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TRUMP'S EPA: Agency at a crossroads -- Complete coverage

Inside EPA's **Weekly Report**, 06/02/2017

<https://insideepa.com/newsletters/inside-epa>

Latest News

EPA Transportation Chief Touts Enforcement Focus As Major Rules Slow

Chris Grundler, head of EPA's Office of Transportation & Air Quality (OTAQ), says enforcement of existing mobile source rules such as the Volkswagen and Fiat "defeat device" cases is an essential priority for OTAQ's future, as the office faces a budget and staffing cut in fiscal year 2018 and its regulatory work appears to slow down.

Eying Planned Budget Cuts, States Identify Dozens Of EPA Rules To Scrap

State officials are urging EPA to "repeal, replace or modify" scores of federal rules, steps that if adopted

would ease states' abilities to implement federal requirements as they weigh plans to slim their programs to absorb the Trump administration's proposed budget cuts in fiscal year 2018.

Daily Feed

EPA allows Obama-era air and enforcement rules to take effect

EPA says that an Obama-era air emissions modeling rule and rules on enforcement actions have now taken effect after the Trump administration temporarily delayed their effective dates.

Law professors fault Trump '2-for-1' order's cost considerations

Administrative and regulatory law professors say Trump's '2-for-1' rule review order is 'fatally flawed,' according to a new legal filing in a case over the order.

Trump extends uncertainty over leaving Paris climate pact

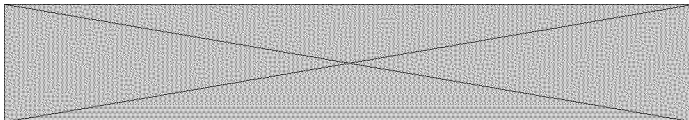
The president says he will announce a decision on whether to leave the landmark Paris climate pact in the next few days, but many observers are expecting him to withdraw.

Ewire: A daily news roundup

Sen. Inhofe says Trump administration doing "pretty well" in their deregulatory efforts despite industry's reported challenges. Plus: preparing to say goodbye to the Paris Climate Deal.

EPA reviewing Region 6 staffer's retaliation claims after hearing

EPA says it is "currently focusing" on claims from an employee in Region 6 who reported retaliation after taking part in a 2015 House hearing on agency mismanagement.

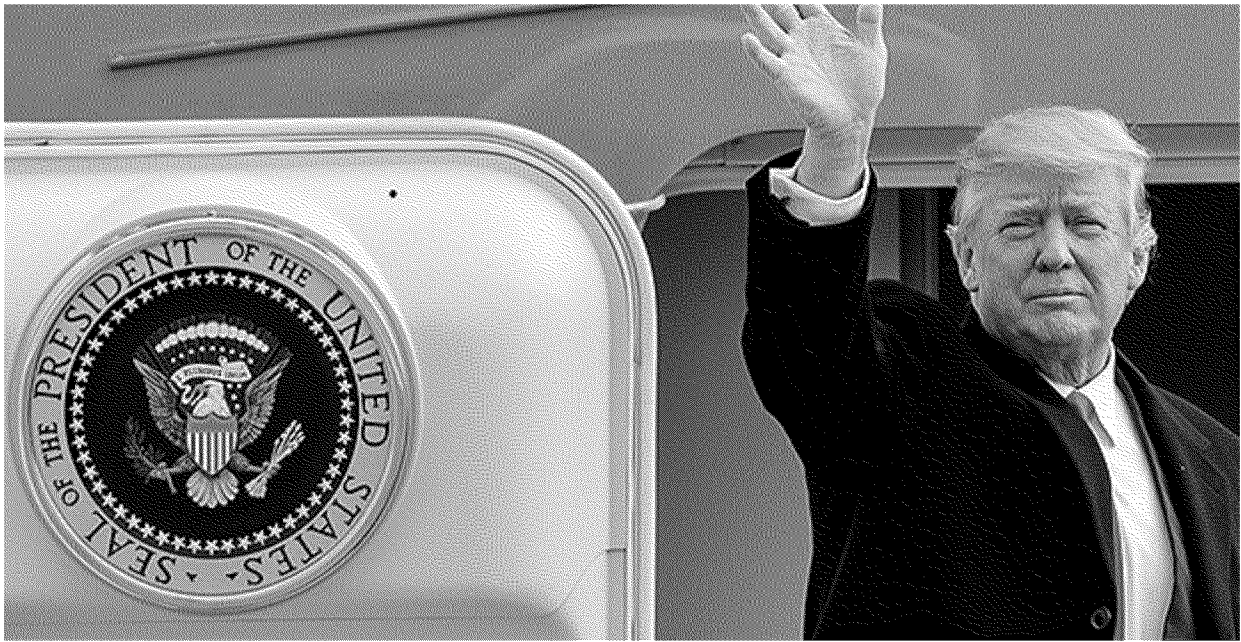


PARIS AGREEMENT

As Trump deliberates, reactions fly from foes and friends

Evan Lehmann and Lisa Friedman, E&E News reporters

Published: Wednesday, May 31, 2017



President Trump is expected to announce his decision this week on whether the United States will stay in the Paris Agreement. White House

President Trump could announce his intention to leave the Paris Agreement tomorrow or Friday, but his thinking on the issue could still change, several sources said today.

After months of debate in the White House, the president is racing toward a self-imposed deadline over the next "few days." He appears to be leaning toward ending the United States' involvement in the global pact, but some administration officials are suggesting that he might change his mind.

The uncertainty over Trump's decision is leaving room for last-minute lobbying by both sides — those who want the president to abide by his campaign promise to "cancel" the deal, and others who argue that it would encourage a global power vacuum that might be filled by U.S. competitors, like China.

Trump's schedule offers evidence of that. Today, he meets with Secretary of State Rex Tillerson, who accepts the science of climate change and supports staying in the accord with weakened emissions targets.

Yesterday, he met with U.S. EPA Administrator Scott Pruitt, who argues that staying in could disrupt the administration's efforts to repeal climate regulations implemented under the Obama administration.

The president's fluid deliberation has prompted discordant views within the administration. One source expressed confidence that Trump would announce his decision to pull out as soon as tomorrow. Another said it's not a done deal.

Tom Pyle, president of the American Energy Alliance, said he's "cautiously optimistic" that the president will end U.S. membership in the deal. But he also gave voice to the risks of predicting Trump's actions.

"It ain't over till it's over," Pyle said.

"It's rather straightforward," he added. "This is an agreement that would have cemented President Obama's climate legacy in place. I do not see a scenario where the United States can renegotiate a better

position."

Sources in the environmental community say European leaders are starting to get calls from the White House laying the groundwork for a U.S. exit.

And environmentalists wasted no time blasting Trump.

Many pointed out that in pulling out, the United States would join Syria and Nicaragua in being among the few countries to reject the Paris Agreement. If Trump takes the more extreme route of withdrawing from the underlying U.N. Framework Convention on Climate Change treaty that binds nations in the fight against global warming, the United States will stand shoulder-to-shoulder with North Korea.

"Trump makes US 'climate pariah' & 'rogue nation,'" Katrina vanden Heuvel, the editor and publisher of *The Nation*, a liberal weekly magazine, tweeted.

"We're not alone!!!," 350.org founder Bill McKibben tweeted. "If US pulls out of Paris, will join Syria, Nicaragua in the anti-physics caucus! Hey guys!"

Rhea Suh, president of the Natural Resources Defense Council, said pulling out of the global agreement would be a "reckless and foolish mistake" and described the Paris deal as a "triumph of American leadership."

"It's about doing what's best for our people at home — spurring clean energy innovation and creating millions of good-paying jobs, while protecting our children and communities from pollution. And we got the whole world to join us," she said in a statement.

Blue-state politicians and city leaders were equally outraged.

New York Mayor Bill de Blasio said withdrawing from the accord "would be horribly destructive for the planet, the country and this city." New Yorkers will "take matters into our own hands," he added in a tweet. "I plan to sign an executive order maintaining New York City's commitment to the Paris Agreement."

Europeans who fought to convince Trump to remain in the deal said they would move on without the United States.

"The world can count on Europe to keep global climate leadership. Together, we will stand by Paris, will defend Paris #EUChina #ParisAgreement," tweeted European Commissioner for Climate Action and Energy Miguel Arias Cañete.

Reporters Emily Holden, Niina Hiekkinen and Jean Chemnick contributed.

PARIS AGREEMENT

E.U., China to make major climate announcement

Jean Chemnick, E&E News reporter

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Diplomats met in Germany earlier this month to discuss the future of the Paris Agreement. The European Union and China will issue a joint statement Friday on climate change as the United States is expected to withdraw from the agreement. United Nations Framework Convention on Climate Change

The European Union and China will issue a statement Friday declaring climate change "an imperative more than ever" in the face of expected U.S. withdrawal from the Paris Agreement.

A final draft statement seen by E&E News, prepared for a meeting Friday, is the first-ever bilateral agreement on climate change between the European Union and China. It will be backed by all 28 E.U. member states, including the United Kingdom.

The draft also called the Paris Agreement a "historic achievement" and "proof that with shared political will and mutual trust, multilateralism can succeed in building fair and effective solutions to the most critical global problems of our time." President Trump's national populism has been seen as a rebuke to post-World War II multilateralism.

It comes amid reports that Trump plans to withdraw the United States from participation in the agreement among nearly 200 nations to reduce greenhouse gas emissions. The administration also is reportedly considering pulling the United States out of the underlying U.N. framework calling on nations to address climate change globally.

The European Union in the draft reaffirmed its commitment to the joint developed-world pledge to mobilize at least \$100 billion a year by 2020 to help poor countries cope with the impacts of global warming.

German Chancellor Angela Merkel, who has exchanged barbs with Trump in the days since last weekend's Group of Seven summit ended in division over Paris and trade issues, is meeting today with Chinese Premier Li Keqiang. The two are expected to make a statement of their own.

Li Shuo, senior global policy adviser for Greenpeace in East Asia, said the E.U.-China pact is a direct response to the Trump administration, which has single-handedly dismantled the bilateral relationship that the United States and China forged throughout the Obama years.

"The moment when Trump announces the Paris pull-out will mark the divorce of [the] U.S.-China climate relationship and the beginning of a reinvigorated partnership between China and the E.U.," he said.

CLIMATE

Commercial plant starts capturing CO2 from open air

Christa Marshall, E&E News reporter

Published: Wednesday, May 31, 2017



Climeworks has brought online the world's first commercial plant that can capture carbon dioxide from the air. Julia Dunlop/Climeworks

The world's first commercial plant for capturing carbon dioxide directly from the air opens today, refueling a debate about whether the technology can truly play a significant role in removing greenhouse gases already in the atmosphere.

The Climeworks AG facility near Zurich becomes the first ever to capture CO2 at industrial scale from air and sell it directly to a buyer.

Developers say the plant will capture about 900 tons of CO2 annually — or the approximate level released from 200 cars — and pipe the gas to help grow vegetables.

While the amount of CO2 is a small fraction of what firms and climate advocates hope to trap at large fossil fuel plants, Climeworks says its venture is a first step in their goal to capture 1 percent of the world's global CO2 emissions with similar technology. To do so, there would need to be about 250,000 similar plants, the company says.

"Highly scalable negative emission technologies are crucial if we are to stay below the 2-degree target [for global temperature rise] of the international community," said Christoph Gebald, co-founder and managing director of Climeworks.

The plant sits on top of a waste heat recovery facility that powers the process. Fans push air through a filter system that collects CO₂. When the filter is saturated, CO₂ is separated at temperatures above 100 degrees Celsius.

The gas is then sent through an underground pipeline to a greenhouse operated by Gebrüder Meier Primanatura AG to help grow vegetables, like tomatoes and cucumbers.

Gebald and Climeworks co-founder Jan Wurzbacher said the CO₂ could have a variety of other uses, such as carbonating beverages. They established Climeworks in 2009 after working on air capture during postgraduate studies in Zurich.

The new plant is intended to run as a three-year demonstration project, they said. In the next year, the company said it plans to launch additional commercial ventures, including some that would bury gas underground to achieve negative emissions.

"With the energy and economic data from the plant, we can make reliable calculations for other, larger projects," said Wurzbacher.

'Sideshow'

There are many critics of air capture technology who say it would be much cheaper to perfect carbon capture directly at fossil fuel plants and keep CO₂ out of the air in the first place.

Among the skeptics are Massachusetts Institute of Technology senior research engineer Howard Herzog, who called it a "sideshow" during a Washington event earlier this year.

He estimated that total system costs for air capture could be as much as \$1,000 per ton of CO₂, or about 10 times the cost of carbon removal at a fossil fuel plant.

"At that price, it is ridiculous to think about right now. We have so many other ways to do it that are so much cheaper," Herzog said.

He did not comment specifically on Climeworks but noted that the cost for air capture is high partly because CO₂ is diffuse in the air, while it is more concentrated in the stream from a fossil fuel plant.

Climeworks did not immediately release detailed information on its costs but said in a statement that the Swiss Federal Office of Energy would assist in financing. The European Union also provided funding.

In 2015, the National Academies of Sciences, Engineering and Medicine released a [report](#) saying climate intervention technologies like air capture were not a substitute for reducing emissions.

Last year, two European scientists wrote in the journal *Science* that air capture and other "negative emissions" technologies are an "unjust gamble," distracting the world from viable climate solutions ([Greenwire](#), Oct. 14, 2016).

Engineers have been toying with the technology for years, and many say it is a needed option to keep temperatures to controllable levels.

It's just a matter of lowering costs, supporters say. More than a decade ago, entrepreneur Richard Branson launched the Virgin Earth Challenge and offered \$25 million to the builder of a viable air capture design.

Climeworks was a finalist in that competition, as were companies like Carbon Engineering, which is backed by Microsoft Corp. co-founder Bill Gates and is testing air capture at a pilot plant in British Columbia.

CALIFORNIA

Senate passes package to offset Trump on environment

Anne C. Mulkern, E&E News reporter

Published: Wednesday, May 31, 2017

California's Senate yesterday stepped up promised efforts to push back against the Trump administration, passing a package of bills to protect federal standards in the Golden State, even if rules are repealed or softened nationally.

"We won't allow Californians to suffer the consequences of Donald Trump's reckless slash-and-burn approach to the environment," state Senate President Pro Tempore Kevin de León (D) said in a statement. "These measures safeguard public health and ensure we continue to make policy based on the best available science, not 'alternative facts' or polluter propaganda."

The "Preserve California" trio of measures included S.B. 49, the "California Environmental Defense Act," from de León and state Sen. Henry Stern (D). It would make existing federal clean air, climate, clean water, worker safety and endangered species standards enforceable under state law.

S.B. 49 would require state agencies to adopt standards "at least as stringent" as baseline levels in the federal Clean Air Act, Safe Drinking Water Act, Water Pollution Control Act and Endangered Species Act and other federal laws "relating to environmental protection, natural resources, or public health." That would mean those would stay at current levels in California if they were weakened nationally.

It would use the federal standards in effect as of Jan. 1, 2016, or Jan. 1, 2017, whichever is more stringent. The measure would prohibit state or local agencies from revising their rules to make them less stringent than those baseline standards, though they could adopt more stringent ones.

Another bill, S.B. 50, the "Public Lands Protection Act," from state Sen. Ben Allen (D), aims to thwart any effort to sell federal lands to private developers. It would give the California State Lands Commission the right to buy any for-sale federal land first, or to arrange the transfer to a third party. Another buyer could get it only if that state agency turned down the purchase.

It would prohibit local counties from recording a deed that says a private interest has purchased federal land, unless that buyer can show that the State Lands Commission was given the right of first refusal and didn't take it.

"The Senate made a strong statement that our national parks and national monuments are not for sale," Allen said in a statement. "With the passage of this legislation, California will have the power to block the sale or lease of these public treasures."

S.B. 51, the "Whistleblower and Public Data Protection Act," from state Sen. Hannah-Beth Jackson (D), offers safeguards for U.S. EPA attorneys, scientists and others "who report cover ups, destruction of information, or other wrongdoing." Those people might have federal whistleblower protection but could still lose their professional certifications under California law, a statement on the measure said.

Federal employees could not lose their state license for revealing violations of law, unethical actions or dangers to public health and safety, the bill says. It also would direct state environmental and public health agencies to protect any information or data under state law, even if the Trump administration orders its censorship or destruction.

Jackson said in a statement said it will "ensure that climate change and other scientific data so critical to our future remains intact and accessible to scientists for years to come."

All the measures must still pass the state Assembly. Democrats control both chambers with a two-thirds majority. There is likely to be support in the Assembly, though "we're not taking anything for granted," said Ann Notthoff, director of California advocacy for the Natural Resources Defense Council, which supports the measures.

Business group opposition

The California Chamber of Commerce and a coalition of business trade groups oppose S.B. 49 and S.B. 50. The chamber called S.B. 49 a "job-killer."

"S.B. 49 is a premature, overbroad, and vague response to actions that could be undertaken in the future ... while in the present creating substantial uncertainty for businesses in advance of any such potential changes, and correspondingly greatly increasing the potential for costly litigation," the chamber and others said in a letter to the Senate Appropriations Committee before it voted on the bill.

"If there is interest in preserving various federal environmental laws, we believe a targeted approach where state agencies respond to federal action on a case-by-case basis is more appropriate," the letter added.

The letter from the chamber and others said "the extent of the costs associated with this mandate is currently unknown but will be significant for state agencies to implement the mandates."

David Pettit, a senior attorney at NRDC, said S.B. 49 is needed to preserve protections like the federal ozone standard. Obama administration EPA Administrator Gina McCarthy in 2015 lowered the ozone standard to 70 parts per billion, citing the need to protect public health. Several lawsuits were filed challenging the rule. The Trump administration has told the court that it's going to rethink the current ozone number, Pettit said. Separately, several measures in Congress are looking at the standard.

If an EPA rule or Congress-passed law allowed a higher level of ozone, the 70 ppb would still apply in California, he said. Businesses with air emissions would have to follow that level in the state.

S.B. 49 also would add to California's air rules all the pollutants the federal Clean Air Act regulates, Pettit said. That includes particulate matter. Right now, there's a debate in California about whether state rules control particulate matter, he said.

"This would put an end to the discussion," he said, because the existing federal law would apply in California.

S.B. 49 would provide protection to important endangered species, said Kate Poole, senior attorney with NRDC's water program. There are several that are not on California's endangered list because "it's always operated sort of in tandem" with the federal Endangered Species Act, she said.

Those species include orcas, southern sea otters, sea turtles and the California red-legged frog, made famous in Mark Twain's short story "The Celebrated Jumping Frog of Calaveras County."

The chamber and other business groups said S.B. 50 likely is unnecessary.

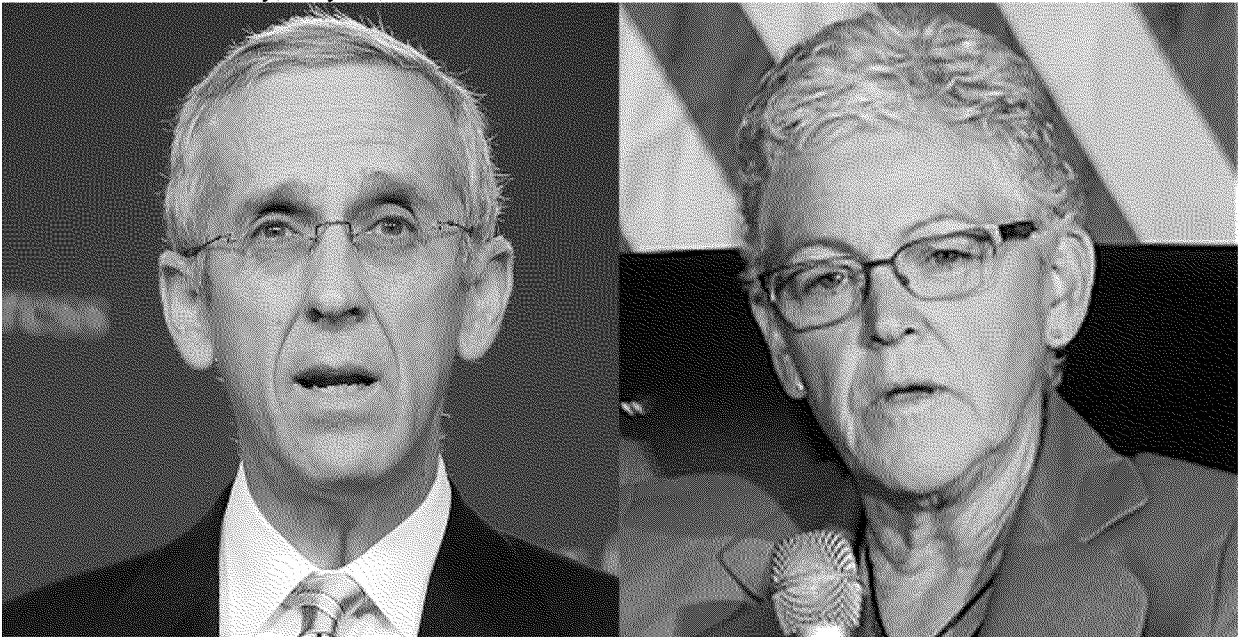
"Although we understand the intent behind SB 50, we also question its need given recent statements by President Donald J. Trump's Administration regarding land transfers in the West," said a letter they sent to the Senate Appropriations Committee. "At a recent Outdoor Industry Association event, Secretary of the Interior Ryan Zinke was publicly quoted as saying 'I'm adamantly opposed to the sale or transfer of public lands. So is my boss.'"

PARIS AGREEMENT

Todd Stern, Gina McCarthy make final pleas

Hannah Hess, E&E News reporter

Published: Wednesday, May 31, 2017



(Left to right) Former U.S. Special Envoy for Climate Change Todd Stern and former U.S. EPA Administrator Gina McCarthy separately warned President Trump against pulling the United States out of the Paris Agreement. Center for American Progress/Flickr(Stern) and Interior Department (McCarthy)

The Trump administration's withdrawal from Paris would be read as a kind of "drop dead" to the rest of the world, Todd Stern, the former U.S. special envoy for climate change, warned today.

In a [piece](#) for *The Atlantic*, Stern predicts "bitterness, anger, and disgust would be the wages" if Trump chooses to join Syria and Nicaragua on the sidelines of the international climate agreement.

Stern's last-ditch attempt to influence the decision — which President Trump could announce as early as today — notes that an exit would "fly in the face of business leaders," including major oil and gas CEOs, who have urged Trump not to defect.

Stern wrote Trump "seems prepared to follow his own misguided calculus and, in the coming days, could render a decision that is indefensible," and offered his take on why and what should happen next.

The nearly 200 other countries that are part of the accord will work to build it into a regime that will enable the globe to meet the climate challenge, Stern predicted. He will encourage them to do so in a manner that would pave the way for re-entry by a future White House.

Blue states, such as California and Washington, and New England will examine whether there is still more they can do on climate, he added. Many more states, including red areas like Iowa, are charging ahead in development of wind and solar energy. Stern is also looking to U.S. cities to step up and work with the U.N. Framework Convention on Climate Change, the parent body for the Paris accord.

Stern urged businesses and investors not to "bet on a go-slow, 'Trump' phase," but to "keep their eyes on the prize and not get distracted by the ideological wars of Washington."

Stern, who was the State Department's top climate diplomat under President Obama, also encouraged political engagement and activism.

"If America leaves the Paris Agreement, the Trump administration will have thrown down the gauntlet. And we will need to take up the challenge," he concluded.

McCarthy: 'Lean in' on climate

Former U.S. EPA Administrator Gina McCarthy also weighed in today. Writing in *Foreign Policy*, McCarthy described the U.S. track record of expanding the economy while cutting greenhouse gas emissions.

McCarthy noted that although climate diplomacy may be "less relevant under this administration's regressive brand of scorched-earth leadership," no one person can stop the trend toward a lower-carbon economy.

"The train to our clean-energy future has left the station," McCarthy wrote, echoing her final sentiments at the helm of the agency (*E&E News PM*, Nov. 21, 2016).

McCarthy, now a fellow at Harvard University, argued the United States must "lean into climate action, not away from it."

PEOPLE

Ex-EPA spokesman heads to United Airlines

Kevin Bogardus, E&E News reporter

Published: Wednesday, May 31, 2017

Frank Benenati, who led public affairs at U.S. EPA during the Obama administration's final year, has moved to the aviation industry.

Benenati has joined United Airlines. He is working as the airline giant's director of corporate communications.



Frank Benenati. Benenati/LinkedIn

"Excited to join the United Airlines team today as the new Director of Corporate Communications," he tweeted yesterday.

Benenati comes to United during a rough ride in the national spotlight. The airline has come under heavy scrutiny after it had a passenger forcibly removed from a flight — an episode that was caught on video and went viral on social media.

At EPA, Benenati's official title was associate administrator for the Office of Public Affairs. Benenati joined the agency in June 2016 after Liz Purchia's departure (E&E News PM, June 6).

Before coming to EPA, Benenati worked in the Obama White House press office, where he handled energy and environmental issues, and earlier was a spokesman for the Office of Management and Budget.

He racked up campaign experience by working as a regional press secretary for Ohio and Virginia for Obama's 2012 re-election bid. Benenati also worked in the House and for the Democratic National Committee.

DOE

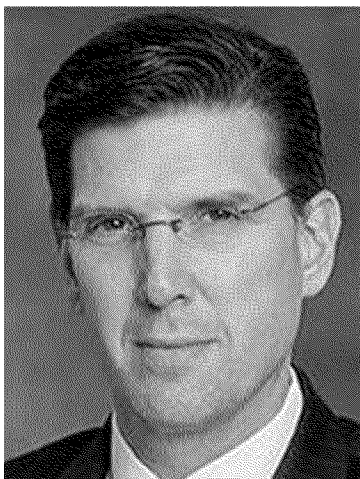
Agency veteran to lead nuclear office

Hannah Northey, E&E News reporter

Published: Wednesday, May 31, 2017

Edward McGinnis, a longtime Department of Energy official focused on nuclear matters, has been chosen to lead the agency's Office of Nuclear Energy until President Trump nominates an assistant secretary, according to an internal email obtained by E&E News.

McGinnis, who's currently overseeing the agency's international civilian nuclear energy activities, will serve as DOE's principal deputy assistant secretary and acting assistant secretary for nuclear energy until a new assistant secretary is nominated and confirmed, Patricia Hoffman, DOE's acting undersecretary of science and energy, told employees in an email today.



Edward McGinnis. McGinnis/LinkedIn

"As folks may be aware, Ed has had extensive experience in global energy initiatives including international nuclear energy research, development and demonstration cooperation, and partnership development, international nuclear energy policy," Hoffman wrote. "One outcome of his work was a 65 nation International Framework for Nuclear Energy Cooperation that is dedicated to the safe, secure, and peaceful use of nuclear energy."

The Office of Nuclear Energy oversees research on new reactor designs and fuel types and efforts to improve reliability and safety and, according to the website, will tackle the administration's "climate change goals." The office's work also addresses nuclear proliferation and terrorism.

McGinnis, a graduate of American University, has served for nearly the past decade as DOE's deputy assistant secretary for international nuclear policy and cooperation. He has a master's degree in foreign policy and international relations from American University.

The email highlights the White House's slow pace of nominations, which has left acting heads at the helm of many DOE offices. Former agency officials say the lag in leadership comes at a precarious time, just as Trump's budget proposes to financially gut the department and scrap some programs ([Greenwire](#), May 26).

FEDERAL AGENCIES

House Dems press White House to disclose ethics waivers

[Kevin Bogardus](#), E&E News reporter

Published: Wednesday, May 31, 2017

House Democrats proposed legislation yesterday aimed at shedding light on ethics waivers given to former lobbyists working in the Trump administration.

Rep. Stephen Lynch (D-Mass.) introduced [H.R. 2762](#), the "White House Ethics Transparency Act of 2017." The bill would require the Trump administration to disclose ethics waivers to the Office of Government Ethics within 30 days of being issued, as well as post them online for the public to see.



Rep. Stephen Lynch (D-Mass.). Library of Congress

"While President Trump pledged to 'drain the swamp,' he has already flooded the White House and other federal agencies with former lobbyists, consultants, and industry attorneys whose previous work in the private sector presents serious conflict of interest concerns," Lynch said in a statement.

The congressman said his bill, by requiring the White House to disclose the waivers, would "ensure that the American people receive the full picture of precisely who is working behind closed doors in their government."

Twenty-four House Democrats have signed on to co-sponsor the bill, including Reps. Elijah Cummings of Maryland, ranking member on the House Oversight and Government Reform Committee, and Maxine Waters of California, ranking member on the House Financial Services Committee.

The legislation comes after a dispute between OGE and the White House over the waivers.

Office of Management and Budget Director Mick Mulvaney was stalling on an OGE request for the waivers. The ethics office had asked federal agencies for the waivers and planned to release them to the public.

In response to Mulvaney's stay on OGE's data request, Walter Shaub, the agency's director, said in a [letter](#) that it declined to suspend its request for the waivers and that agencies should comply with it by OGE's deadline of June 1, which is tomorrow ([Greenwire](#), May 23).

The White House says it now plans to release the waivers.

"It is the White House's intention to post the waivers by June 1st," Lindsay Walters, a White House spokeswoman, told E&E News.

TRADE

Lawmakers mobilize to save NAFTA energy provisions

[Geof Koss](#), E&E News reporter

Published: Wednesday, May 31, 2017

Dozens of House lawmakers from both parties are calling on the Trump administration to maintain energy portions of the North American Free Trade Agreement ahead of talks to renegotiate the landmark deal expected to commence this summer.

The lawmakers pressed their concerns over the upcoming renegotiations in a letter yesterday to U.S. Trade Representative Robert Lighthizer.

The missive emphasized the "highly integrated and interdependent" nature of the North American energy market, which includes pipelines and electric transmission lines crossing the U.S., Canadian and Mexican borders.

"Maintaining the free flow of energy among these countries is vital to American energy security and economic viability," said the letter, led by Reps. Tom Reed (R-N.Y.) and Terri Sewell (D-Ala.).

Since NAFTA took effect in 1994, the continent has undergone "dramatic" energy changes, the letter said, including the United States becoming the world's top oil and gas supplier; Mexico opening its energy sector to foreign investment; and Canadian investment in oil sands, liquefied natural gas and infrastructure.

"In short, NAFTA has set the stage for North America to be truly energy independent," wrote the House members, which also include Natural Resources Chairman Rob Bishop (R-Utah), onetime Trump energy adviser Rep. Kevin Cramer (R-N.D.), former Energy and Commerce Chairman Joe Barton (R-Texas), and Rep. Bobby Rush of Illinois, top Democrat on the Energy and Commerce Subcommittee on Energy.

The letter credits the present infrastructure system for lowering natural gas and transportation fuel prices while boosting national security by easing reliance on foreign energy sources.

The trade representative's office did not respond to a request for comment on the letter. Under the process Lighthizer outlined to congressional leaders last month, negotiations to "modernize" NAFTA will commence in August ([Energywire](#), May 19).

As those talks get underway, the House members asked him to "consider the importance of maintaining, and where feasible upgrading, policies regarding the free flow of raw and refined products from oil and natural gas, the absence of tariffs on energy products, protections for U.S. intellectual property, as well as access to Canadian and Mexican markets."

They wrote, "These policies will help ensure the continued growth and stability of the North American energy market, supporting U.S. economic and security efforts."

The American Petroleum Institute applauded the members for recognizing the "many benefits" the North American energy markets provide the U.S. economy and consumers.

"NAFTA has played a critical role facilitating North American energy self-sufficiency by facilitating cross-border trade and investment in energy, supporting millions of U.S. jobs in the oil and natural gas industry," said API CEO Jack Gerard in a statement.

"We look forward to continuing our work with the administration and Congress on forward-looking energy policies that protect American energy consumers," Gerard said.

Environmentalists and many of their Democratic allies are also NAFTA critics but have outlined vastly different approaches to modernize the deal.

The Sierra Club last month called for stronger environmental and labor protections in any new North American trade deal, including scrapping the investor-state dispute settlement (ISDS) system that allows corporations to challenge government decisions.

"Across the country, people are calling for an entirely new approach to trade: one that prioritizes people and the planet over polluters," said Sierra Club Executive Director Michael Brune last month.

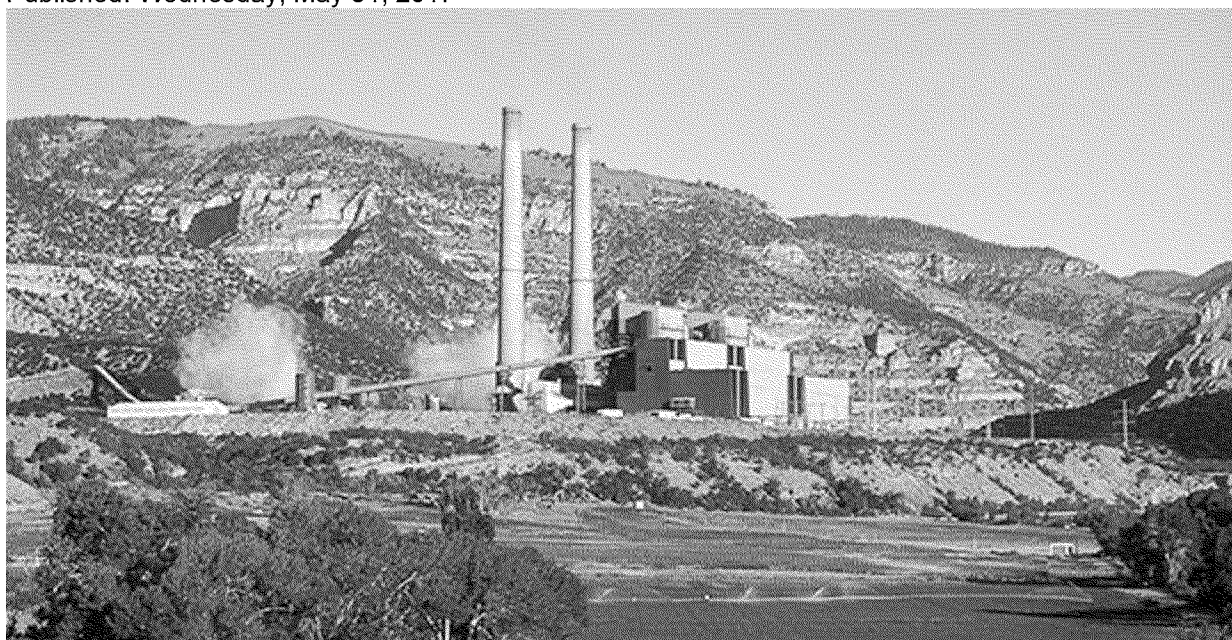
"A new trade deal must support good union jobs, livable wages, healthy communities, clean air and water, and a more stable climate," he said. "Any deal that falls short of these widely shared priorities will face vigorous opposition from the same movement of millions — across sectors, borders and party lines — that defeated the Trans-Pacific Partnership."

AIR POLLUTION

Court approves delay in Utah haze case

Sean Reilly, E&E News reporter

Published: Wednesday, May 31, 2017



A federal appeals court granted a delay in the briefing schedule for a case surrounding U.S. EPA's haze reduction plan for Utah, which would require two coal-fired plants, including the Huntington plant, to install stricter controls on emissions of nitrogen oxides. *Pacific Power/Flickr*

At U.S. EPA's request, a federal appellate court has pushed back the briefing schedule in litigation over the agency's haze reduction plan for Utah.

The agency had sought the blanket 60-day extension last week, partly on the grounds that it is pursuing an administrative settlement to the legal challenges brought by the state of Utah and PacifiCorp. In an unsigned order yesterday, the 10th U.S. Circuit Court of Appeals granted the request, noting that none of the parties to the litigation had objected.

The extension means that EPA's next brief, which had been due Friday, must now be filed by Aug. 1, with final briefs in the case set for submission by Nov. 13. In asking for the delay, an EPA attorney had also noted that vacancies in the agency's political leadership include positions with "direct responsibility" for the case ([E&E News PM](#), May 24).

The regional haze reduction program, dating back to 1999 in its current form, aims to restore pristine views to 156 national parks and wilderness areas by 2064. The agency's plan for Utah, which partially overrode the state's proposal, requires Oregon-based PacifiCorp to eventually slash emissions of nitrogen oxides at two older coal-fired power plants in the central part of the state by almost 10,000 tons per year.

The agency, which went ahead with the plan last summer after taking public feedback on both its strategy and the state's alternative, has said that the required controls are already widely used and will lead to better views in eight parks. Utah's air quality chief has countered that the new regulations will produce little visibility improvement in return for a \$700 million price tag.

At HEAL Utah, one of several environmental and public health groups that have intervened in the litigation, Executive Director Matt Pacenza said yesterday that the organization had asked EPA's Region 8 office in Denver early this month for the chance to participate in any settlement talks but had not yet received a response.

"It would certainly behoove all parties to involve all stakeholders," Pacenza said.

In an email this morning, Region 8 spokesman Richard Mylott declined to comment, citing the ongoing litigation.

OIL AND GAS

EPA finalizes methane rule compliance delay

[Sean Reilly](#), E&E News reporter

Published: Wednesday, May 31, 2017

U.S. EPA is moving ahead with a promised 90-day stay of compliance with key parts of its regulations to limit methane emissions from new and substantially modified sources in the oil and natural gas sector.

In a news release this morning, the agency said the stay applies to the fugitive emissions, pneumatic pumps and professional engineer certification requirements in the rule, which was issued last June.

EPA Administrator Scott Pruitt had announced plans for the stay last month in agreeing to requests from energy industry trade groups to administratively reconsider the rule ([Greenwire](#), April 19). It will take effect upon publication of the [reconsideration notice](#) in the *Federal Register*.

The agency's announcement of the stay comes four days after Canada published a proposal to limit methane releases from its oil and gas sector, pursuant to an agreement with the United States last year while President Obama was still in office.

Methane is a potent greenhouse gas; U.S. oil and gas companies have long called for addressing the emissions issue through voluntary measures. They also object to specific provisions in the EPA rule, such as the inclusion of low-production wells.

Environmental groups supportive of tighter regulatory curbs quickly attacked the agency's change of course.

At the Clean Air Task Force, Advocacy Director Conrad Schneider this morning said it was "ironic" that the Trump administration is reneging on last year's agreement just as Canada is proposing its standards.

"Clearly, the U.S. is no longer the climate leader even in North America, and is further abdicating its responsibility to the global community to address climate change," Schneider said in a statement.

The administration "is giving its friends in the oil and gas industry a free pass to continue polluting our air," David Doniger, director of the Natural Resources Defense Council's climate program, said in a separate statement, adding that group will fight the move in court.

POLITICS

Trump transition alum leads new group pushing carbon tax

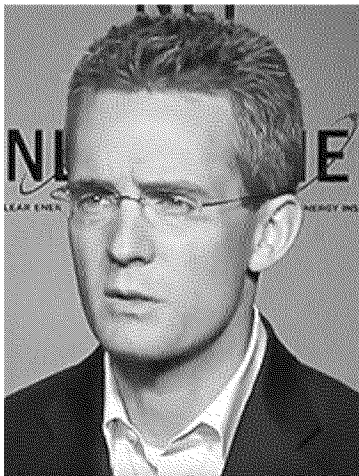
Hannah Hess, E&E News reporter

Published: Wednesday, May 31, 2017

A new group urging Republicans to adopt a revenue-neutral carbon tax coupled with repeal of greenhouse gas regulations brings together heavy hitters from the nuclear energy industry.

Launched today, the Alliance for Market Solutions is led by Alex Flint, a former member of President Trump's transition team who previously worked as senior vice president of governmental affairs at the Nuclear Energy Institute, and by fellow NEI alumnus Chris Carter.

Flint told E&E News the group's mission is educational and it plans to meet with a broad range of conservatives across the country and in Washington, D.C.



Alex Flint. Nuclear Energy Institute/YouTube

"But we are not in advocacy mode; we're looking past current tax-reform discussions and want to get a conversation started on a market-based solution that repeals harmful regulations, replaces them with a revenue-neutral carbon tax policy that would produce more economic growth and jobs," Flint said in an

email.

The board of directors for AMS brings together three Republicans with experience in private equity, investment banking and energy consulting. Advisers include Vicky Bailey, who served as an assistant secretary at the Department of Energy under the George W. Bush administration and as a Republican commissioner of the Federal Energy Regulatory Commission; John Rowe, chairman emeritus of Exelon Corp.; and former Sen. Mel Martinez (R-Fla.).

The alliance aims to "educate conservative policymakers on the benefits of market-oriented solutions to one of America's most pressing economic challenges: advancing clean energy and reducing carbon pollution," a mission statement said.

In an 86-page [publication](#) released today by AMS, scholars including former George W. Bush administration regulatory chief John Graham lay out their case. They argue that "burdensome" rules could be replaced with a tax levied on fossil fuels that would help ease the transition to renewable and nuclear energy.

AMS has no position on any particular industry or how large or small a role it should play, according to Flint.

Unlike a proposal that former Secretary of State James Baker and senior GOP statesmen pitched to the White House in February, orchestrated by the Climate Leadership Council, AMS is not pushing a dividend model ([Greenwire](#), Feb. 8).

"Using the proceeds of a carbon tax to pay a rebate or dividend would produce no additional economic growth or jobs," AMS states on its website. Instead, the group advocates using the revenue to cut corporate or individual income taxes, estimating each American family would benefit by nearly \$3,000 annually.

Flint left NEI last fall, amid a number of high-profile departures that its then-CEO, Marvin Fertel, wrote were intended to better position the ailing industry and "change the dialogue" before a new administration took power ([Greenwire](#), Aug. 4). Flint helped guide Interior Secretary Ryan Zinke through the Senate confirmation process.

MINING

Alpha sells W.Va. coal, natural gas sites

Published: Wednesday, May 31, 2017

Alpha Natural Resources Inc. intends to sell a coal mine and natural gas operation in West Virginia.

The company, which emerged from bankruptcy restructuring in 2016, announced the coal sale to Quinwood Coal Co. The facilities include permits and a coal plant that has been idle since 2014.

The gas assets will go to Kinzer Drilling.

Terms of sale were not released. CEO David Stetson said the sales reduce Alpha's annual bonding by \$3.5 million and reduced holding costs on unused assets by \$1.1 million annually ([St. Louis Post-Dispatch](#), May 31). — NB

DOE

Funding for failed ethanol plant sparks clash with Abengoa

Published: Wednesday, May 31, 2017

The Department of Energy is fighting to recover money from a Spanish renewable energy company.

DOE invested \$95 million in a project by Spanish renewable energy giant Abengoa SA in 2007.

The federal tax dollars went toward the construction of an \$850 million ethanol plant and neighboring electricity plant in Kansas.

The plant was not completed, and Abengoa sold the property last year for nearly \$50 million. DOE officials say the government should collect a portion of the money earned from the sale.

But lawyers for Abengoa Bioenergy Biomass of Kansas LLC, the subsidiary behind the rural project, are arguing that DOE isn't entitled to collect the funds.

The lawyers wrote in court papers that documentation of the investment "contains no repayment terms or payment enforcement rights; no maturity date; no interest provisions; and no other terms or conditions typical of a loan agreement" (Katy Stech, Wall Street Journal, May 30). — MJ

VIETNAM

Dust explosion hits troubled steel plant

Published: Wednesday, May 31, 2017

A dust explosion rocked a steel plant in Vietnam responsible for one of the country's worst environmental disasters in recent years.

The explosion, which was triggered by the combustion of fine dust particles, hit the Formosa Plastics Group's steel plant late last night.

The incident occurred just one day after the plant resumed test operations for the first time since spilling toxic waste last year.

The toxic waste polluted more than 125 miles of Vietnam's coastline, devastating marine life and local fishing-dependent economies (Greenwire, May 4, 2016).

While yesterday's explosion caused no casualties, it is likely to raise fresh concerns about the safety of the \$11 billion plant (Hung/Pham, Reuters, May 31). — MJ

AUSTRALIA

Massive mine angers enviros as Great Barrier Reef declines

Published: Wednesday, May 31, 2017

Coal interests and environmentalists concerned about the Great Barrier Reef are clashing in Queensland,

Australia, over a massive \$16.5 billion mine set to break ground this year.

Backed by Indian billionaire Gautam Adani, the Carmichael coal mine may be subsidized by federal and state dollars.

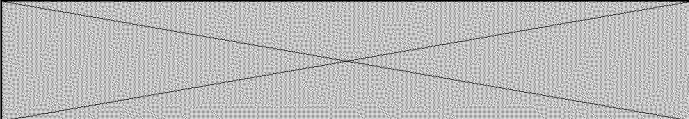
Opponents say dredging at a mine port would harm the reef, but the real damage would come from greenhouse gas emissions from coal. Burning the coal in the Galilee Basin would release an estimated 705 metric tons of carbon dioxide each year.

"Put another way," said a report from the Climate Council, an independent think tank, "if the Galilee Basin were a country on its own, it would rank in the top 15 emitting countries in the world."

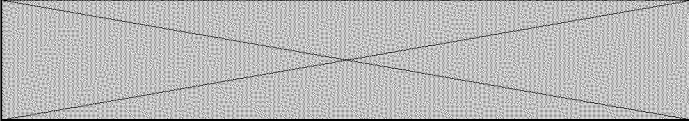

Warming oceans have proven devastating for the famous reef.

Researchers found that 91 percent of the Great Barrier Reef had experienced coral bleaching in the last two decades and that half of the coral may be dead.

The project is not a sure thing. Australian banks have distanced themselves from the mine, and public anger has spiked both at the environmental damages and the proposed government subsidies (Rod McGuirk, *AP/San Francisco Chronicle*, May 30). — NB

	
AN E&E NEWS PUBLICATION	
CLIMATEWIRE — Thu., June 1, 2017	
READ FULL EDITION	
<p>1. <u>PARIS AGREEMENT:</u> <u>'Nothing is decided until it's announced' — at 3 p.m.</u> President Trump will seek to end months of disunity in the White House this afternoon by announcing his decision on the Paris climate agreement, an issue that has sown discord among Cabinet members and senior advisers.</p>	
<p>PEXIT OR PREMAIN?</p>	
<p>2. <u>STATES:</u> <u>Governors, faced with Paris withdrawal, pledge climate action</u></p>	
<p>3. <u>DIPLOMACY:</u> <u>World prepares to fill 'void' as U.S. exit looms</u></p>	
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AN E&E NEWS PUBLICATION	
ENERGYWIRE — Thu., June 1, 2017	
 READ FULL EDITION	
	1.OIL: <u>With new actions, Zinke says Alaska is 'open for business'</u> ANCHORAGE, Alaska — The Trump administration announced a series of steps yesterday designed to kick-start oil drilling on federal lands in Alaska and to reject the land preservation policies adopted under former President Obama.
TOP STORIES	2.BUSINESS: <u>Activists celebrate Exxon climate resolution's passage</u> 3.METHANE: <u>Enviros prepare lawsuit as EPA freezes oil and gas standards</u> 4.BUDGET: <u>Trump's spending plans keep DHS in cyber spotlight</u>
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2nd shale boom pushed by super rigs

12.OIL MARKETS:

Deep-sea drilling costs fall

13.PIPELINES:

British Columbia parties vow to block Kinder Morgan expansion

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